

LOUIS R. MILLER (State Bar No. 54141)
smiller@millerbarondess.com
JASON H. TOKORO (State Bar No. 252345)
jtokoro@millerbarondess.com
STEVEN G. WILLIAMSON (State Bar No. 343842)
swilliamson@millerbarondess.com
MILLER BARONDESS, LLP
2121 Avenue of the Stars, Suite 2600
Los Angeles, California 90067
Tel.: (310) 552-4400 | Fax: (310) 552-8400

Attorneys for Defendants

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

ALEX VILLANUEVA,

Plaintiff,

v.

COUNTY OF LOS ANGELES,
COUNTY OF LOS ANGELES
SHERIFF'S DEPARTMENT, LOS
ANGELES COUNTY BOARD OF
SUPERVISORS, COUNTY EQUITY
OVERSIGHT PANEL, LOS
ANGELES COUNTY OFFICE OF
INSPECTOR GENERAL,
CONSTANCE KOMOROSKI,
MERCEDES CRUZ, ROBERTA
YANG, LAURA LECRIVAIN,
SERGIO V. ESCOBEDO, RON
KOPPERUD, ROBERT G. LUNA,
MAX-GUSTAF HUNTSMAN,
ESTHER LIM, and DOES 1 to 100,
inclusive,

Defendants.

CASE NO. 2:24-cv-04979 SVW (JCx)

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

*[Filed Concurrently with Notice of
Motion; Declarations in Support;
Separate Statement; Notice of Lodging;
and [Proposed] Order]*

Date: May 19, 2025

Time: 1:30 p.m.

Crtrm.: 10A

Assigned to the Hon. Stephen V.
Wilson and Magistrate Judge Jacqueline
Chooljian

Trial Date: June 3, 2025

MILLER BARONDESS, LLP

ATTORNEYS AT LAW
2121 AVENUE OF THE STARS, SUITE 2600 LOS ANGELES, CALIFORNIA 90067
TEL: (310) 552-4400 FAX: (310) 552-8400

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MILLER BARONDESS, LLP

ATTORNEYS AT LAW

2121 AVENUE OF THE STARS, SUITE 2600 LOS ANGELES, CALIFORNIA 90067
TEL: (310) 552-4400 FAX: (310) 552-8400

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1 **I. INTRODUCTION**

2 In March 2022, two personnel complaints were filed against Plaintiff—who
3 was then the elected Sheriff of the County of Los Angeles (“County”)—alleging he
4 violated the Policy of Equality (“POE”) prohibiting harassment and discrimination
5 within the County’s ranks. An outside law firm investigated those complaints. The
6 investigations and their outcomes—including a notation in Plaintiff’s personnel
7 file—were dictated by the evidence and independent decisions of the oversight
8 panel. These facts are beyond dispute.

9 Plaintiff’s theory rests on sweeping allegations of conspiracy orchestrated by
10 the County’s Board of Supervisors (“Board”) to retaliate against him for exercising
11 his First Amendment free speech rights while he was Sheriff. But *no evidence*
12 supports that theory. Instead, after extensive discovery, including thousands of
13 pages of documents and depositions from everyone involved, the undisputed
14 evidence definitively *forecloses* this theory. The Board had no involvement in the
15 POE complaints, investigations, or resulting file notation; and those independent
16 processes were wholly unrelated to Plaintiff’s public opposition to the Board.

17 This is exactly the kind of case that warrants summary judgment, because no
18 evidence creates a genuine issue of fact for trial. Speculation and unsupported
19 claims of conspiracy are legally insufficient to avoid summary judgment. *See, e.g.,*
20 *United States ex rel. Cafasso v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1061
21 (9th Cir. 2011) (“To survive summary judgment, a plaintiff must set forth non-
22 speculative evidence of specific facts, not sweeping conclusory allegations.”).

23 The Court should grant summary judgment under Rule 56 for several reasons:

24 *First*, Plaintiff cannot meet his burden to establish a *prima facie* case of First
25 Amendment retaliation. He cannot show a material adverse action that prevented
26 him from performing his job as Sheriff or that chilled his speech. The voters, not
27 Defendants, ended Plaintiff’s tenure in office; and Plaintiff has continued to freely
28 air his views—and oppose the Board—on public issues.

1 The POE investigations, and resulting file notation (which is a notation to the
2 file about a finding, not an edict not to hire), are insufficient to support a First
3 Amendment claim. They do not preclude Plaintiff's ability to seek employment
4 with the County and have no bearing on his ability to seek employment elsewhere.
5 And it was Plaintiff, *not Defendants*, who made the investigations public; the First
6 Amendment does not "immunize" Plaintiff from "political fallout" of his own
7 making. *See, e.g., Blair v. Bethel Sch. Dist.*, 608 F.3d 540, 542 (9th Cir. 2010).

8 Moreover, no evidence supports any "substantial causal relationship" between
9 Plaintiff's protected speech and the file notation. Nor is Plaintiff's speech the "but-
10 for" cause for the notation. Plaintiff's founded violations of the POE indisputably
11 are the cause.

12 *Second*, Plaintiff cannot satisfy *Monell*. Plaintiff does not identify a County
13 policy, custom, or practice that caused him harm. To the contrary, he alleges that he
14 was targeted by the Board in an "*unprecedented*" way.

15 *Third*, Plaintiff lacks standing because he has not been injured. Plaintiff has
16 not even attempted to seek employment with the County. Nor is there any evidence
17 that he applied for and was denied a job with anyone because of the file notation.

18 **II. UNDISPUTED FACTS**

19 **A. POE Complaints Filed Against Plaintiff In March 2022**

20 **1. The Lim Complaint**

21 Lim was a Justice Deputy to Board Supervisor Hilda Solis. Justice Deputies
22 engage in oversight of the Department. (Decl. of Esther Lim ¶ 3.)

23 On March 8, 2022, Lim filed a complaint alleging that Plaintiff had violated
24 the POE. (Statement of Uncontroverted Facts ("SUF") 1.) Lim alleged, among
25 other things, that Plaintiff engaged in a pattern of harassment by repeatedly
26 disparaging her in public forums, including on Facebook Live, going back to
27 February 2021. (Lim Decl. ¶¶ 5–16.)

28 She alleged that, as recently as March 2, 2022, Plaintiff referred to her and

1 fellow Justice Deputies as “all women” and “woke flunkies” “right out of college.”
2 (*Id.* at 10 & COE Ex. 18 at 415.) Lim also alleged that Plaintiff “targeted,
3 intimidated, and harassed another Asian woman,” former County CEO Sachi
4 Hamai. (*Id.* ¶ 16.) Lim stated her belief that Plaintiff made these statements to
5 “discredit her character, education, and experience” and that they were “linked to
6 her age, sex, and race.” (COE Ex. 21 at 430.)

7 The County Intake Specialist Unit (“CISU”) determined that it did not have
8 jurisdiction because Plaintiff was a Department member. (SUF 2.) Accordingly, it
9 recommended that the Department investigate the matter. (*Id.* 3–5.)

10 The Lim complaint was then sent to the Department on March 17, 2022 and
11 fielded by its Intake Specialist Unit (“ISU”). The ISU interviewed Lim and
12 gathered evidence. (*See* COE Ex. 21 at 430–35.) The ISU determined that the
13 conduct alleged warranted further investigation by the Department. (SUF 6.)

14 The Department admonished Plaintiff on March 23, 2022. (*Id.* 9.) The
15 Department did not ever conclude that Plaintiff had not committed a policy violation
16 or place Lim’s complaint into a “suspense file.” (*Id.* 7-8.)

17 Neither the Board nor Sheriff Luna had any involvement in Lim’s complaint
18 or its assessment. (*Id.* 52–53.) The Lim complaint had nothing to do with
19 Plaintiff’s opposition to ballot measures, vaccine mandates, or the County’s Covid
20 testing contract with Fulgent Genetics (“Fulgent”). (*Id.* 54.)

21 All of these facts are undisputed.

22 **2. The Huntsman Complaint**

23 Huntsman is the County Inspector General. The Inspector General’s office
24 oversees the Department. (Decl. of Max Huntsman ¶ 3.)

25 On March 8, 2022, Huntsman filed a complaint alleging that Plaintiff had
26 violated the POE. (SUMF 18.) Huntsman reported that Plaintiff had sent a
27 Department email that was a “racially biased attack.” (COE Ex. 32 at 560.) He also
28 reported that Plaintiff had “repeatedly” referred to him as “Max-Gustaf”—a name

1 he had changed years ago—“in public attacks” to cause “extremists” that Plaintiff
2 “caters to” to view to him as either German or Jewish. (*Id.*) Plaintiff admitted
3 knowing he did not go by “Max-Gustaf” and that Plaintiff “intentionally misnamed
4 [him] for the purpose of benefiting from the racial animosity that could trigger”
5 extremists in Plaintiff’s “audience.” (*Id.*)

6 CISU determined that it did not have jurisdiction because Plaintiff was a
7 Department member. (SUF 19.) Accordingly, it recommended that the Department
8 investigate the matter. (SUF 20–21.)

9 The Huntsman complaint was then sent to the Department on March 17, 2022
10 and fielded by its ISU. ISU interviewed Huntsman and gathered evidence. (*See*
11 COE Ex. 34.) ISU determined that the conduct alleged warranted further
12 investigation by the Department. (SUF 22.)

13 The Department admonished Plaintiff on March 23, 2022. (*Id.* 25.) The
14 Department did not ever conclude that Plaintiff had not committed a policy violation
15 or place Huntsman’s complaint into a “suspense file.” (*Id.* 23-24.)

16 A week later, on April 1, 2022, Plaintiff told the Los Angeles Times that
17 Huntsman had filed a complaint against him and Plaintiff accused Huntsman of
18 being a Holocaust denier. (*Id.* 27.)

19 Neither the Board nor Sheriff Luna had any involvement in the Huntsman
20 complaint or its assessment. (*Id.* 56–57.) The Huntsman complaint had nothing to
21 do with Plaintiff’s protected speech. (*Id.* 58.)

22 Again, after extensive discovery, none of these facts are, or can be, disputed.

23 **B. Sanders Roberts Investigations**

24 Sanders Roberts was retained to investigate the complaints. (SUF 13, 30.)
25 On June 29, 2022, Plaintiff was notified by the Department that he was the subject
26 of two administrative investigations involving allegations of discrimination,
27 harassment, and retaliation in violation of the POE. (*Id.* 12, 29.)
28

1 **1. The Lim Investigation**

2 On July 28, 2022, the attorney-investigator with Sanders Roberts, Christine
3 Diaz-Herrera (“Diaz”), interviewed Lim. (SUF 14.) Lim detailed a pattern of
4 harassment by Plaintiff against Lim and her fellow female Justice Deputies. (COE
5 Ex. 25 at 488–509.) On multiple occasions, he referred to them as being all women
6 and “flunkies.” (*Id.* at 502.) He also described them as “twenty-five-year-olds”
7 who were “right out of college” and did not know what they were doing, despite the
8 fact that Lim and several others were in their forties, with decades of experience and
9 advanced degrees. (*Id.* at 498, 502.) Lim said that Plaintiff stated he wanted to take
10 the all-women Board “to a shed and beat them.” (*Id.* at 500.)

11 Lim detailed an instance where Plaintiff referred to Supervisor Solis as “La
12 Malinche,” a racist and sexist slur.¹ (*Id.* at 500–01.) He also harassed former CEO
13 Hamai for being Asian-American. (*Id.* at 501.) Lim also told Diaz about two letters
14 that Plaintiff had sent to the Board, CEO’s Office, Human Resources, and County
15 Counsel, demanding that Supervisor Solis take appropriate administrative action.
16 (*Id.* at 501–02.) Lim viewed these as Plaintiff trying to get her fired. (*Id.* at 505.)

17 Lim explained that she was concerned about Plaintiff’s public attacks because
18 he made them as Sheriff, in uniform, using Department platforms, and that they
19 could be heard by “violent or dangerous” people. (*Id.* at 472.) Lim expressed her
20 safety concerns and fear that listeners could retaliate against the Justice Deputies
21 based on Plaintiff’s statements. (*Id.*)

22 On August 11, 2022, Diaz interviewed Justice Deputy Veronica Pawlowski
23 (“Pawlowski”). (SUF 14.) Pawlowski corroborated Lim’s account. (SUF 16, COE
24 Ex. 25 at 480–83.) She also provided additional examples of Plaintiff’s harassment,
25

26 _____
27 ¹ “La Malinche” was an indigenous female consort of Hernan Cortes, who was
28 enslaved and bore his child. She was seen as a race traitor, and a pejorative symbol
of female deceit and betrayal. Supervisor Solis is Hispanic. (COE Ex. 25 at 500.)

1 such as calling the Justice Deputies “young twenty something woke and dumb
2 women.” (COE Ex. 25 at 481.) Pawlowski objected to Plaintiff’s unsubstantiated
3 claims that the Board was corrupt and being criminally investigated. (*Id.* at 482.)
4 Pawloski also expressed safety concerns. (COE Ex. 6 at 128–129.)

5 On August 4, 2022, Diaz interviewed Justice Deputy Kyla Coates (“Coates”).
6 (SUF 14.) Coates provided similar accounts of how Plaintiff used his platform as
7 Sheriff to harass the Board and its Justice Deputies. (SUF 16, COE Ex. 25 at 477–
8 79.) She identified instances where Plaintiff referred to the Justice Deputies as
9 unqualified women. (COE Ex. 25 at 477.) Coates also described an instance where
10 Plaintiff said to her directly that she “worships at the altar of wokeness, hates the
11 police and wants to defund the police.” (*Id.* at 478.)

12 Pawlowski and Coates did not file complaints against Plaintiff because they
13 feared he would retaliate against them, like he had with Lim. (Pawlowski Decl.
14 ¶ 17, Coates Decl. ¶ 16.) Diaz also collected evidence, including recordings of
15 Plaintiff’s statements on Facebook Live and the KFI radio show. (SUF 17.)

16 Neither the Board nor Sheriff Luna was involved in Diaz’s investigation. (*Id.*
17 52–53.) And the investigation had nothing to do with Plaintiff’s speech. (*Id.* 54.)

18 None of the foregoing is in dispute. It is exactly what happened.

19 **2. The Huntsman Investigation**

20 On July 21, 2022, Diaz interviewed Huntsman. (SUF 31.) Huntsman
21 detailed a pattern of harassment by Plaintiff. (COE Ex. 38 at 612–48.) He
22 explained that he met with Plaintiff in June 2019, during which Plaintiff told him, in
23 a “significant way,” that if his office issued a report, there “would be
24 consequences.” (*Id.* at 622.) Huntsman took this to be a threat. (*Id.* at 622–25.)
25 Huntsman’s office issued the report and shortly thereafter Plaintiff announced on a
26 podcast that Huntsman was under criminal investigation. (*Id.* at 622–23.)

27 Huntsman believed Plaintiff’s sudden use of “Max-Gustaf” starting in late
28 2021 was an attempt to “dog-whistle” to Plaintiff’s extremist followers by stirring

1 up anti-Semitic sentiment. (*Id.* at 628–29.) Huntsman never used “Max-Gustaf”
2 professionally and had changed it years before Plaintiff took office. (*Id.* at 632–33.)
3 And Plaintiff acknowledged knowing it was not his name. (*Id.* at 634–36.)

4 After Huntsman filed his POE complaint, Plaintiff went further and called
5 him a Holocaust denier. (*Id.* at 635, 637–39.) Huntsman expressed his belief that
6 this was another attempt to reach Plaintiff’s extremist supporters. (*Id.* at 628–29.)
7 Huntsman noted that Plaintiff’s similar public attacks against other County officials
8 had caused them to be targeted by Plaintiff’s supporters, to the point where they
9 needed to retain security. (*Id.*)

10 Pawlowski said that Plaintiff would comment about Huntsman “nonstop” and
11 that she believed Plaintiff was attempting to paint Huntsman as “some kind of
12 Nazi.” (*Id.* at 476.) Diaz also collected evidence, including recordings of Plaintiff’s
13 statements, social media posts, and press articles. (SUF 34.)

14 Neither the Board nor Sheriff Luna was involved in any way in Diaz’s
15 investigation. (*Id.* 56–57.) And it had nothing to do with Plaintiff’s protected
16 speech. (*Id.* 58.) Again, none of this is in dispute.

17 **C. Plaintiff Refuses To Be Interviewed By Sanders Roberts**

18 Diaz attempted to interview Plaintiff but was not able to. (SUF 35–36.) Diaz
19 tried to interview Plaintiff while he was still in office but he didn’t return her
20 messages. (Diaz Decl. ¶ 31–34) Diaz tried to interview Plaintiff in 2023 after he
21 lost reelection, but Plaintiff insisted that she send him the questions in advance. (*Id.*
22 ¶ 35 & COE Ex. 24.) Plaintiff said, if he was going to be interviewed, it was going
23 to be “on my terms.” (COE Ex. 24.) Diaz explained that sending him the questions
24 would go against standard practice, but she did give him a summary of the alleged
25 POE violations. (*Id.*) Plaintiff still refused. (*Id.*) Hence, Plaintiff stonewalled and
26 thereby delayed the investigation.

27 **D. The IAB Case Files**

28 Sanders Roberts completed its investigations in June 2023 and provided them

1 to the Department. (SUF 37.) The Department finalized its case files in October
2 2023. (*Id.* 38.) Neither the Board nor Sheriff Luna was involved. (*Id.* 52–53, 56–
3 57.) It had nothing to do with Plaintiff’s protected speech. (*Id.* 54, 58.) The
4 Department did not reopen the Lim or Huntsman investigations in September
5 2023—they were never “suspended” or “closed.” (*Id.* 40, 42–44.)

6 **E. The CEOP Concludes The Charges Against Plaintiff Were**
7 **“Founded” And Recommends File Notation**

8 Due to the fact that Lim and Huntsman alleged POE violations by Plaintiff,
9 the complaints were presented to the County Equity Oversight Panel (“CEOP”) for
10 review. (SUF 39, 41, 45–50.) The CEOP is comprised of employment law experts
11 that review POE complaints and recommend discipline. (*See, e.g.*, Cruz Decl. ¶ 2.)
12 The purpose of the CEOP is to ensure that an independent, impartial body makes
13 recommendations based on the facts, without any outside influence or interference.
14 (*See id.*)

15 The Lim and Huntsman complaints were assigned to a CEOP panel consisting
16 of Roberta Yang, Mercedes Cruz, and Constance Komoroski (the “Panel”). (*See,*
17 *e.g.*, Cruz Decl. ¶ 3.) The Panel met on October 17, 2023 and recommended that all
18 but one of the alleged POE violations by Plaintiff be deemed “founded.” (SUF 46,
19 48.) The Panel also recommended that a “Do Not Rehire” notation be placed on
20 Plaintiff’s County personnel file. (*Id.* 47, 49.) The notation is one of the tools that
21 County departments have at their disposal where the “subject” is no longer at the
22 County and therefore cannot be disciplined. (Cruz Decl. ¶¶ 5–6.)

23 It does not *per se* prevent an individual from being rehired by the County.
24 (SUF 50.) It is used as a notation or “flag” in the file that alerts the department to
25 review the personnel file before making any hiring decision. (Cruz Decl. ¶¶ 5–6.) It
26 is, in effect, an alert if the person applies for County employment (which did not
27 ever happen here).

28 The Department concurred in the Panel’s recommendations. (SUF 51.)

1 Plaintiff was not the first member of the Department to receive the notation—it was
2 not created for him. (COE Ex. 4 at 136:10–20)

3 Neither the Board nor Sheriff Luna had any involvement in the CEOP’s
4 recommendations or the Department’s concurrence. (SUF 52–53, 56–57.) The
5 outcome did not have anything to with Plaintiff’s protected speech. (*Id.* 54, 58.)
6 Nor did it have anything to do with Plaintiff running for the Board. (*Id.* 55, 59.)
7 Again, this is all undisputed.

8 **F. The Los Angeles Times**

9 In November 2023, the Times served a Public Records Act request for the
10 investigation files. (COE Ex. 63.) The Department provided redacted files as it was
11 required to do by law. (COE Ex. 64.) On January 31, 2024, the Times published a
12 story about the Huntsman complaint and outcome. (Decl. of Jason Tokoro ¶ 104.)

13 **G. Plaintiff Continues To Harass Lim And Huntsman**

14 Plaintiff’s attacks against Huntsman, Lim, the Board, the Department, and
15 Sheriff Luna have not ceased. (*See* SUF 10, 26–27, 60–61.) He has not been
16 dissuaded. His speech has not been chilled.

17 For example, on May 17, 2023, Plaintiff accused Huntsman of “ethnic
18 cleansing,” and that “[h]is family has a long history about persecution, and he
19 knows what I’m talking about.” (COE Ex. 67 at 45:00.) On September 25, 2024—
20 three months *after* filing this lawsuit—Plaintiff called Lim a “disgruntled former
21 employee” and questioned her qualifications to work for the County. (*Id.* Ex. 68 at
22 17:00.) On December 4, 2024, Plaintiff falsely claimed Lim had been “kicked out”
23 by Supervisor Solis and that it was “good” she was fired. (*Id.* Ex. 69 at 13:00.)

24 **H. Procedural Background**

25 Plaintiff filed his Tort Claim on May 15, 2024. (Dkt No. 46, Exs 7–8.) There
26 was nothing in it about ballot measures, vaccine mandates, or Fulgent. (*See id.*)

27 Plaintiff filed his Complaint on June 13, 2024. (Dkt No. 1.) There was
28 nothing in it about ballot measures, vaccine mandates, or Fulgent. (*See id.*)

1 Plaintiff filed his First Amended Complaint (“FAC”) on September 30, 2024
2 and, for the first time, alleged that the “protected speech” he engaged in was his
3 opposition to Ballot Measures A, J, and R, the County’s Covid vaccine mandate,
4 and the County’s Fulgent contract. (Dkt No. 46.) The FAC further alleges a
5 sweeping conspiracy headed by the Board to retaliate against Plaintiff for his views
6 on these issues. (*Id.*)

7 Plaintiff deposed every person involved in the POE complaints. (Tokoro
8 Decl. ¶ 5.) He also served documents requests, interrogatories, and requests for
9 admission. (*Id.* ¶ 9.) Defendants responded and produced thousands of pages of
10 documents. (*Id.* ¶10.) Fact discovery is closed.

11 No evidence supports Plaintiff’s claims. Every witness testified that
12 Plaintiff’s protected speech had nothing to do with the outcome of the complaints.
13 Nor did Plaintiff’s running for the Board. Put simply, there is no genuine dispute of
14 material fact here—undisputed evidence shows none of the Defendants’ actions
15 were retaliation for Plaintiff’s speech. And nothing Plaintiff claims to have endured
16 is materially adverse under settled law.

17 **III. SUMMARY JUDGMENT STANDARD**

18 A court grants summary judgment where the moving party shows there is no
19 dispute as to any material fact and that it is entitled to judgment as a matter of law.
20 *Fed. R. Civ. P. 56; Celotex Corp. v. Catrett*, 477 U.S. 317, 322–23 (1986). The
21 material facts here are not in dispute.

22 **IV. PLAINTIFF’S FIRST AMENDMENT CLAIM FAILS**

23 **A. Plaintiff Has The Burden To Establish His Claim**

24 Plaintiff alleges that he “engaged in protected First Amendment activities as
25 an *elected official*.” (FAC at 2:1 (emphasis added).) To establish a First
26 Amendment claim, Plaintiff must show (1) he engaged in protected activity; (2) as a
27 result, he was subject to adverse action by the defendant that would chill or silence
28 an ordinary person from continuing to engage in the protected activity; and (3) there

1 was a substantial causal relationship between the protected activity and the adverse
2 action. *Blair*, 608 F.3d at 543. It is Plaintiff’s burden to make a *prima facie*
3 showing of these elements. *Boquist v. Courtney*, 32 F.4th 764, 775 (9th Cir. 2022)
4 (quoting *Blair* and noting “the elected official bringing such a legal action has the
5 initial burden of pleading and proving” all three elements).

6 If that *prima facie* showing is made, the burden shifts to Defendants to show
7 that they would have taken the same adverse action even in the absence of animus or
8 retaliatory motive. *Boquist*, 32 F.4th at 778. “If there is a finding that retaliation
9 was not the but-for cause of the [adverse action], the claim fails for lack of causal
10 connection between unconstitutional motive and resulting harm, despite proof of
11 some retaliatory animus in the official’s mind.” *Id.*

12 Plaintiff cannot meet his burden. He cannot show an adverse action. His
13 speech was not chilled. Nor can he show that there was a substantial causal
14 relationship between his speech and the file notation. Even if he could, the
15 undisputed evidence shows the County would have taken the same actions even in
16 the absence of retaliatory motive.

17 **B. There Is No Adverse Action As A Matter Of Law**

18 The standard for what constitutes an “adverse action” is heightened in cases
19 involving elected officials. “[I]t is more difficult for elected officials to establish
20 that they were subjected to an adverse action that offends the First Amendment
21 because ‘more is fair in electoral politics than in other contexts’ . . . and the First
22 Amendment therefore ‘doesn’t shield public figures from the give-and-take of the
23 political process.’” *Boquist*, 32 F.4th at 776 (citations omitted). Courts dismiss, or
24 grant summary judgment on, First Amendment claims that do not meet this
25 standard. *E.g.*, *Blair*, 608 F.3d at 542 (affirming summary judgment); *Phelan v.*
26 *Laramie Cnty. Cmty. Coll. Bd. of Trs.*, 235 F.3d 1243, 1245 (10th Cir. 2000) (same);
27 *Mattox v. City of Forest Park*, 183 F.3d 515, 523 (6th Cir. 1999) (reversing order
28 denying summary judgment); *Houston Cmty. Coll. Sys. v. Wilson*, 595 U.S. 468, 479

(2022) (affirming dismissal).²

1. **The “Do Not Rehire” Notation is Not an Adverse Action**

“[M]inor indignit[ies]” and “de minimis deprivations of benefits and privileges” are insufficient to establish an adverse action when it comes to elected officials. *Blair*, 608 F.3d at 544. The plaintiff must show that the adverse action prevents them from doing their job or exercising the authority enjoyed by virtue of his or her popular election. *Wilson*, 595 U.S. at 479. Actions that are part of the governmental process, including public reprimands, are not enough. See *id.*; *Blair*, 608 F.3d at 544.

In *Wilson*, the plaintiff, an elected board member of a public entity, waged a public campaign against fellow board members. 595 U.S. at 471–72. In interviews, he claimed the board was unethical; he hired a private investigator to follow a board member; and he arranged robocalls to constituents publicizing his views. *Id.* Plaintiff was twice publicly reprimanded by the board for “inappropriate” and “reprehensible” conduct, but he vowed to, and did, continue his conduct. *Id.* He sued the board, alleging, among other things, that its censure was unlawful retaliation in violation of his First Amendment rights. *Id.*

The Supreme Court held that the board’s public censure was not a material adverse action and was legally insufficient to support the First Amended retaliation claim. *Wilson*, 595 U.S. at 479. The censure was not actionable because it did not prevent the plaintiff from doing his job as a board member, deny him any privilege of office, or abridge his right to speech. *Id.* at 478–79. The Court instructed that the First Amendment may not be used as a weapon to “silence” the board’s legitimate act “concern[ing] the conduct of public office.” *Id.*

² See also *Hensley v. City of Port Huememe*, No. 2:17-cv-08422-AB(Ex), 2019 WL 3035057, at *3–4 (C.D. Cal. May 7, 2019) (granting city summary judgment); *Westfall v. City of Crescent City*, No. CV 10-5222 NJV, 2011 WL 4024663, at *3–4 (N.D. Cal. Sept. 9, 2011) (granting city’s motion to dismiss).

1 *Phelan*, 235 F.3d 1243 and *Zilich v. Longo*, 34 F.3d 359, 361 (6th Cir. 1994),
2 confirm that Plaintiff’s First Amendment claim fails as a matter of law. In *Phelan*,
3 the plaintiff was a member of the county board of trustees. She publicly opposed a
4 funding measure that was put to the voters. 235 F.3d at 1245. The board concluded
5 the plaintiff’s statements, which contained false information, violated the ethics
6 policy, and it censured her. *Id.* at 1245–46. She filed a First Amendment retaliation
7 case, alleging the board’s censure tarnished her reputation and violated her
8 constitutional rights. *Id.* at 1246.

9 The Tenth Circuit affirmed summary judgment for the board, concluding the
10 censure was not an adverse action because it did not infringe the plaintiff’s free
11 speech rights. *Id.* at 1248. It noted the board’s statement that plaintiff violated the
12 ethics policy did not prevent her from performing any official duties, speaking out,
13 or voting; she “remained free to express her views publicly and to criticize the ethics
14 policy and the [b]oard’s censure.” *Id.* The court also rejected the plaintiff’s
15 argument that the censure “tarnished her reputation,” holding such conduct could
16 not support a First Amendment claim by an elected official given the countervailing
17 interests in robust debate on public issues. *Id.*

18 In *Zilich*, the plaintiff was a former city council member who won political
19 office despite the fact that he did not satisfy the city’s residency requirement. 34
20 F.3d at 361. During his tenure, the plaintiff “was a thorn in the side of the mayor
21 and his administration” and “challenged the city’s fiscal policies, its contract
22 bidding procedures and the actions of the police and law departments, among other
23 issues.” *Id.* After his term ended, the city council passed a resolution and ordinance
24 stating that plaintiff was never qualified to hold office to begin with due to the
25 residency requirement, and instructed the city law director to claw back his salary.
26 *Id.* at 361–62. Plaintiff sued, claiming First Amendment retaliation and alleging that
27 “the resolution was part of the ongoing conspiracy to harass and intimidate him, and
28 was meant to threaten him and ruin his political career.” *Id.* The Sixth Circuit held

1 that, even if the city’s actions were driven by “political spite or for partisan, political
2 or ideological reasons,” it was not an actionable adverse action. *Id.* at 363.

3 The Ninth Circuit has cited *Wilson*, *Phelan*, and *Zilich* with approval. *See*
4 *Blair*, 608 F.3d at 546 (citing *Phelan* and *Zilich*); *Boquist*, 32 F.4th at 775–76 (citing
5 all three). These cases require that summary judgment be entered for Defendants.

6 There is no genuine dispute of material fact that the Lim and Huntsman
7 complaints did not prevent Plaintiff from doing his job or exercising his authority as
8 Sheriff, nor did the complaints prevent Plaintiff from exercising his free speech at
9 Board meetings or with the public. To the contrary, Plaintiff continued to speak out
10 against Lim, Huntsman, and the Board after the complaints were filed. (*See* SUF
11 10, 26–27, 60–61.) There is also no genuine dispute of material fact that the file
12 notation did not impact Plaintiff not being re-elected in November 2022, since it had
13 not happened yet. (SUF 45–49.) Nor did it prevent him for running for the Board in
14 2024. (*Id.* 55, 59.)

15 The Department’s conclusion that Plaintiff violated the POE and accordingly
16 was given a file notation is less severe than the public censures in *Wilson*, *Phelan*,
17 and *Zilich*. Indeed, those facts were not public during Plaintiff’s term as Sheriff.
18 (*See* SUF 45–49.) And they never would have become public had *Plaintiff* not told
19 the Times about the Huntsman complaint in April 2022. (*See id.* 27.)

20 The Department’s acts did not prevent Plaintiff from doing his job, or from
21 exercising his rights and enjoying his privileges as an elected official. *See Wilson*,
22 595 U.S. at 481 (discipline falling short of exclusion from office is insufficient);
23 accord, *Boquist*, 32 F.4th at 775–76. The Department was entitled to state that
24 Plaintiff violated the POE. *See Wilson*, 595 U.S. at 479. Even assuming it was
25 intended to “tarnish [his] reputation,” as Plaintiff alleges (albeit without any
26 evidentiary support), that is not enough to support a First Amendment retaliation
27 claim by an elected official. *See Zilich*, 34 F.3d at 363; *Phelan*, 235 F.3d at 1248
28 (“In the First Amendment context, however, injury to one’s reputation is not

1 enough.”); *Blair*, 608 F.3d at 542 (the First Amendment “does not, however,
2 immunize [an official] from the political fallout of what he says”).³

3 **2. Plaintiff’s Speech Was Not “Chilled”**

4 When looking at whether the alleged adverse action would chill an ordinary
5 person from continuing to engage in the protected activity, courts consider whether
6 the plaintiff’s speech was in fact chilled. See *Wilson*, 595 U.S. at 471, 479 (plaintiff
7 responded to reprimand by saying it would “never ... stop me” and “did not exactly
8 cower silently”); *Phelan*, 235 F.3d at 1248 (noting the plaintiff was not chilled).

9 There is no genuine dispute of material fact that the complaints did not chill
10 Plaintiff’s speech. To the contrary, Plaintiff continued to speak out publicly against
11 Lim, Huntsman, and the Board after he learned about the complaints in March 2022.
12 Plaintiff sent letters to the Board about issues before it. (COE Exs. 54–59.) Plaintiff
13 also conducted weekly Facebook Live sessions. (*Id.* Exs. 60–61, 65–66, 67–70.)
14 And Plaintiff spoke out via various media outlets. (Tokoro Decl. ¶¶ 91–99, 116–
15 26–31, COE Ex. 62.) In fact, some of Plaintiff’s protected activity, such as Ballot
16 Measure A, post-date the complaints. (COE Ex. 5 at 132:14–133:25.)

17 There is also no genuine dispute of material fact that the file notation has not
18 “chilled” Plaintiff’s speech. Plaintiff has continued to do weekly Facebook Live
19 sessions and speak out against Lim, Huntsman, and the Board. (Tokoro Decl.
20 ¶¶ 108–15, 132–37.) Plaintiff has also continued to speak out via various media
21 outlets. (*Id.* ¶¶ 116–26.)

22 **C. There Is No Substantial Causal Relationship**

23 Plaintiff cannot meet his burden to show a causal relationship between his
24 alleged protected activity and any action taken by any of the Defendants. There is
25 no genuine dispute of material fact that Plaintiff’s speech played no part in the Lim
26

27 ³ Plaintiff claims the file notation was intended to hurt his chances of being elected
28 to the Board in 2024, but that election was decided by the voters, not Defendants.

1 or Huntsman complaints, investigations, or outcome. (*See* SUF 54, 58.)

2 There is no evidence that Plaintiff’s opposition to ballot measures, vaccine
3 mandates, or Fulgent played any role. (*See id.*) The undisputed evidence is to the
4 contrary. Lim and Huntsman testified that Plaintiff’s political positions were not the
5 reason for their complaints. (COE Ex. 11 at 251:25–253:25; Ex. 9 at 187:10–24.)
6 And it played no role in Diaz’s independent investigation. (Diaz Decl. ¶¶ 53–58.)
7 The Panel confirmed that Plaintiff’s opposition to Board actions were not discussed
8 or considered in making its recommendations. (COE Ex. 4 at 141:22–146:1, Ex. 10
9 at 128:21–130:20, Ex. 14 at 141:6–144:1.) The same goes for the Department. (*Id.*
10 Ex. 16 at 62:8–65:16., Ex. 12 at 139:23–142:11, Ex. 75 at 131:15–134:1, Devane
11 Decl. ¶¶ 37–42, Kopperud Decl. ¶¶ 32–37.)

12 Plaintiff has nothing more than conspiracy theories and baseless speculation.
13 That is not enough to avoid summary judgment. The fact that the allegedly adverse
14 action post-dated the protected activity is also not enough to show retaliation—more
15 is required. *Huskey v. City of San Jose*, 204 F.3d 893, 899 (9th Cir. 2000) (“To
16 conclude that Greene was aware of Huskey’s statements to Gallo and that Greene
17 retaliated against Huskey because of them would be to engage in the logical fallacy
18 of *post hoc, ergo propter hoc*, literally, ‘after this, therefore because of this.’”);
19 *Quiroz v. Horel*, 85 F. Supp. 3d 1115, 1140 (N.D. Cal. 2015) (“However, without
20 more, suspect timing is insufficient to lead to a reasonable inference of retaliatory
21 motive.”); *see also Anthoine v. N. Cent. Counties Consortium*, 605 F.3d 740, 753
22 (9th Cir. 2010) (when a plaintiff relies on circumstantial evidence, “that evidence
23 must be specific and substantial to defeat” summary judgment).

24 Plaintiff tries to satisfy causal connection by alleging that the Lim and
25 Huntsman investigations were “put in a suspense file without further action” after
26 “IAB had determined that no policy violation occurred,” but that on “September 20,
27 2023—a week after Villanueva announced his candidacy for the [Board]—the
28 Sheriff’s Department reopened the investigation.” (FAC ¶¶ 17, 18.b.) None of this

1 is true and no evidence supports Plaintiff's claims.

2 *First*, IAB never determines policy violations. IAB's role is to investigate the
3 allegations and ascertain the facts. (COE Ex. 8 at 22:7–21; Kopperud Decl. ¶¶ 7–8,
4 Devane Decl. ¶¶ 6–7.) Here, there is no genuine dispute of material fact that IAB
5 did not make any determinations regarding the Lim or Huntsman complaints. (SUF
6 38, 40.) *Second*, POE complaints are not decided by IAB—they are submitted to
7 the CEOP. (Kopperud Decl. ¶¶ 7–8, Devane Decl. ¶¶ 6–7.) *Third*, there is no such
8 thing as a “suspense file” with the Department. (SUF 40, 42.) *Fourth*, as set forth
9 above, the undisputed evidence shows that the Lim and Huntsman complaints were
10 filed in March 2022, investigated by Sanders Roberts, and reviewed by the Panel in
11 October 2023. (*Id.* 1, 18, 13, 30, 45.) They were never “suspended.”

12 **D. No “But-For” Causation**

13 Summary judgment is also proper because any alleged retaliatory animus by
14 Defendants was not the but-for cause for the file notation. *Boquist*, 32 F.4th at 778.

15 Plaintiff was alleged to have violated the POE by harassing Lim and
16 Huntsman based on protected characteristics, including gender, race, and ethnicity.
17 (SUF 1, 18.) Plaintiff's statements were made during Facebook Live sessions,
18 Board meetings, press conferences, and media interviews. (COE Exs. 25, 38.)
19 These statements were recorded and are undisputed. (*Id.*) Plaintiff also harassed
20 Lim and Huntsman through social media and communications with the Board and
21 the Department. (*Id.*) The Panel reviewed the investigation files and determined
22 that Plaintiff violated several provisions of the POE. (SUF 46, 48.)

23 There is simply no dispute of material fact that the outcome would have been
24 the same no matter what. The Panel would have recommended the “founded”
25 charges and file notation on the record before it regardless of retaliatory animus,
26 because the independent investigation compelled those outcomes. Plaintiff's
27 contrary theory rests solely on “unsupported conjecture” that is insufficient to create
28 an issue of fact. *See, e.g., Williams v. Seniff*, 342 F.3d 774, 785 (7th Cir. 2003)

(conclusory statements and “unsupported conjecture [are] not competent evidence” to rebut a defendant’s showing that a decision was based on legitimate factors).

V. PLAINTIFF CANNOT ESTABLISH SECTION 1983 LIABILITY

Plaintiff brings his First Amendment claim pursuant to 42 U.S.C. § 1983. (FAC ¶¶ 20–30.) Summary judgment should be granted for the governmental entity defendants (County, Department, Board, CEOP, and Office of the Inspector General) because Plaintiff cannot satisfy the well-established *Monell* standard that applies to § 1983 claims.

“A government entity may not be held liable under 42 U.S.C. § 1983, unless a policy, practice, or custom of the entity can be shown to be a moving force behind a violation of constitutional rights.” *Hartzell v. Marana Unified Sch. Dist.*, 130 F.4th 722, 734 (9th Cir. 2025); *Monell v. Dep’t of Soc. Servs. of City of New York*, 436 U.S. 658, 691 (1978) (“a municipality cannot be held liable *solely* because it employs a tortfeasor—or, in other words, a municipality cannot be held liable under § 1983 on a *respondeat superior* theory”).

The Ninth Circuit has recognized three ways to satisfy *Monell*: (1) the government entity acted “pursuant to an expressly adopted official policy”; (2) the government entity acted pursuant to a “longstanding practice or custom”; or (3) the individual who committed the constitutional tort was an “official with final policy-making authority.” *Hartzell*, 130 F.4th at 734. “Proof of random acts or isolated events is insufficient to establish custom.” *Navarro v. Block*, 72 F.3d 712, 714 (9th Cir. 1995), *as amended on denial of reh’g* (Jan. 12, 1996). Liability “may not be predicated on isolated or sporadic incidents; it must be founded upon practices of sufficient duration, frequency and consistency that the conduct has become a traditional method of carrying out policy.” *Trevino v. Gates*, 99 F.3d 911, 918 (9th Cir. 1996), *holding modified by Navarro v. Block*, 250 F.3d 729 (9th Cir. 2001).

Plaintiff cannot satisfy *Monell*:

First, Plaintiff does not allege his constitutional rights were violated by a

1 County policy, custom or practice. To the contrary, Plaintiff alleges that the County
2 deviated from standard procedures in an attempt to tarnish his reputation. (*See* FAC
3 3:23–4:2, 4:12–14.) Specifically, Plaintiff alleges that the “decision by the Board”
4 to assign him the notation was “unprecedented.” (*See id.* at 3:23–24, 4:4, 6:22–23.)
5 This is the polar opposite of *Monell*. In addition, there is no dispute of material fact
6 that the Plaintiff is the only elected County official this has happened to. This is the
7 type of “isolated or sporadic incident” that the Ninth Circuit has recognized cannot
8 establish a practice or custom. *E.g.*, *Trevino*, 99 F.3d at 918.

9 *Second*, there are no “official[s] with final policy-making authority” here.
10 *Hartzell*, 130 F.4th at 734. Plaintiff must identify specific proof regarding “a
11 specific person or persons, their authority, their knowledge, and what they said and
12 did on a specific occasion to ratify a specific decision.” *Id.* at 735. Plaintiff cannot.
13 The Board was not involved. (*See* SUF 52, 56.) Sheriff Luna was not involved.
14 (*See id.* 53, 57.) The CEOP does not make policy. (*Id.* 62.) Nor does Chief
15 Lecrivain. (*Id.* 63.)

16 **VI. PLAINTIFF LACKS ARTICLE III STANDING**

17 Article III standing is a jurisdictional requirement. *E.g.*, *Cetacean Cmty. v.*
18 *Bush*, 386 F.3d 1169, 1174 (9th Cir. 2004). A plaintiff must show (i) an injury in
19 fact that is concrete and particularized; (ii) that the injury was caused by the
20 defendant; and (iii) that the injury would likely be redressed by judicial relief.
21 *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61, 578 (1992) (holding that
22 respondents lacked standing). The plaintiff bears the burden of establishing
23 standing. *TransUnion LLC v. Ramirez*, 594 U.S. 431, 423 (2021).

24 The “concrete-harm requirement” is “essential to the Constitution’s
25 separation of powers.” *TransUnion*, 594 U.S. at 429. To satisfy the requirement, a
26 plaintiff must show an injury that is “real, and not abstract.” *Id.* at 424 (citation
27 omitted). A hypothetical injury that may or could occur does not suffice, because
28 the “mere risk of future harm” is not a concrete harm. *Id.* at 436; *Probodanu v.*

1 *Sessions*, 387 F. Supp. 3d 1031, 1039 (C.D. Cal. 2019) (“Fear of some hypothetical,
2 future harm is insufficient to satisfy standing’s injury-in-fact requirement.”).

3 Plaintiff has not suffered any actual or imminent injury. The County did not
4 end Plaintiff’s career as Sheriff—the voters did. He then ran for, and lost, a race for
5 a position on the Board. There is no evidence that Plaintiff’s election losses had
6 anything to do with the “Do Not Rehire” notation.

7 It is also undisputed that Plaintiff has not sought employment with the County
8 at any time since the file notation. (COE Ex. 5 at 258:11–13.) While Plaintiff
9 alleged that applying for a job with the County would be futile because the “‘Do Not
10 Hire’ list precludes these opportunities” (FAC at 6:18–19), the undisputed evidence
11 is to the contrary. (SUF 50.) The notation does not “preclude” Plaintiff from being
12 re-hired by the County or the Department. (*Id.*)

13 The only job Plaintiff has applied for in the past year-and-a-half is for Chief
14 of Police with LA Metro. (COE Ex. 5 at 256:22–257:6.) It is undisputed that
15 Plaintiff’s application was considered and he was interviewed as part of the process.
16 (*Id.* at 257:21–258:4.)

17 **VII. THE COUNTY IS THE ONLY PROPER DEFENDANT**

18 The County is the only proper defendant. Plaintiff sued the County and 13
19 other defendants, which are either County subdivisions or employees or contractors
20 acting in their official capacity.

21 The FAC does not allege that any individual defendant was acting in their
22 personal capacity. On the contrary, it alleges that the misconduct complained of
23 was done as employees or contractors of the County. (*See* FAC ¶ 6.)

24 There are also no facts to show that individual defendants were not acting in
25 their official capacity. Official capacity claims can only be brought against a county
26 entity. *See, e.g., Pierce v. San Mateo Cnty. Sheriff’s Dep’t*, 232 Cal. App. 4th 995,
27 1018 (2014); *Kentucky v. Graham*, 473 U.S. 159, 166 (1985). The individual
28 defendants should be dismissed.

1 The same is true for the County subdivision defendants. This Court has
2 recognized on numerous occasions that subdivisions should be dismissed where, as
3 here, a party asserts claims that are identical to those asserted against the entity.
4 *See, e.g., Garcia v. County of Riverside*, No. EDCV 13–00616–JGB (SPX), 2013
5 WL 12167913, at *8 (C.D. Cal. Aug. 1, 2013). Furthermore, “[a] subsidiary of a
6 public entity is not a proper defendant on a § 1983 claim.” *Gordon v. County of*
7 *Orange*, No. SACV 14-01050-CJC(DFMx), 2019 WL 4279036, at *8 (C.D. Cal.
8 Aug. 5, 2019), *aff’d in part, rev’d in part and remanded*, 6 F.4th 961 (9th Cir.
9 2021); *see also Solesbee v. County of Inyo*, No. 1:13-CV-1548 AWI JLT, 2014 WL
10 3890680, at *2 (E.D. Cal. Aug. 7, 2014) (“When a subdivision of a county is sued,
11 the suit is construed as being against the county; the subdivision is not a proper
12 party defendant.”). The FAC alleges identical claims against the County and its
13 various subdivisions. (*See* FAC ¶¶ 20–49.) Thus, the entity defendants are
14 redundant and should be dismissed.

15 In addition, there is no genuine dispute of material fact that Sheriff Luna and
16 the Board were not involved in the complaints. (*See* SUF 52–53, 56–57.) They
17 should be dismissed.

18 **VIII. CONCLUSION**

19 For the foregoing reasons, Defendants respectfully request that the Court
20 grant the Motion and enter judgment in their favor.
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1 DATED: April 21, 2025

Respectfully Submitted,

2 MILLER BARONDESS, LLP

3
4
5 By: /s/ Jason H. Tokoro

6 JASON H. TOKORO

7 Attorneys for Defendants

MILLER BARONDESS, LLP

ATTORNEYS AT LAW

2121 AVENUE OF THE STARS, SUITE 2600 LOS ANGELES, CALIFORNIA 90067
TEL: (310) 552-4400 FAX: (310) 552-8400

CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Defendants, certifies that this brief
contains 6,935 words, which:

☒ complies with the word limit of L.R. 11-6.1.

☐ complies with the word limit set by court order dated _____.

DATED: April 21, 2024



JASON H. TOKORO

MILLER BARONDESS, LLP

ATTORNEYS AT LAW

2121 AVENUE OF THE STARS, SUITE 2600 LOS ANGELES, CALIFORNIA 90067
TEL: (310) 552-4400 FAX: (310) 552-8400